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U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
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Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE DANIEL DAVID WARREN and KATHLEEN ANN WARREN, also known as Kathleen Ann Chalk, Debtors.	BAP No. UT-05-025
ADRIAN MATHAI, ZUBIN MATHAI, OTE DEVELOPMENT USA INC., and 9056-0566 QUEBEC, INC., doing business as OTE Canada, Plaintiffs – Appellees, v. DANIEL DAVID WARREN and KATHLEEN ANN WARREN, Defendants – Appellants.	Bankr. No. 04B-26507 Adv. No. 04PB-2671 Chapter 7 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Utah

Before MICHAEL, McNIFF, and JACKSON[1], Bankruptcy Judges.

Jackson, Bankruptcy Judge.

Daniel David Warren and Kathleen Ann Warren ("Debtors" or "Warrens"), appeal the bankruptcy court's March 28, 2005, Memorandum Decision ("Appealed Order") denying their discharge under 11 U.S.C. § 727(a)(2) and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

1 Honorable Niles L. Jackson, United States Bankruptcy Judge, United States Bankruptcy Court for the Western District of Oklahoma, sitting by designation.

§ 727(a)(4)(A). On appeal Debtors argue that: 1) the bankruptcy court erred in holding that they participated in pre-bankruptcy planning with actual intent to hinder, delay, or defraud their creditors; and 2) the bankruptcy court erred in holding that they intentionally made a false oath relating to a material fact on their statements and schedules. Because we find the bankruptcy court's decision to deny their discharges pursuant to § 727(a)(2)(A) so thorough and compelling, we affirm on that ground alone, finding no need to address Debtors' arguments under § 727(a)(4).

I. BACKGROUND

Prior to filing their Chapter 7 petition in April 2004,[2] Debtors, both experienced certified public accountants,[3] generated cash by selling many of their non-exempt assets. Thereafter, Debtors spent these funds, along with additional monies, to purchase exempt assets and prepay future living expenses. These actions resulted in negligible non-exempt assets remaining to be liquidated for payment to their approximately six thousand creditors.

Debtors do not quibble in any material way with the bankruptcy court's basic findings of fact, other than a rather sweeping indictment in their Opening Brief that: "[i]n light of the entirety of the record, this Court should discount the Bankruptcy Court's findings of fact."[4] Rather, Debtors challenge the bankruptcy judge's ultimate inferences regarding Debtors' intent and their veracity in preparing their bankruptcy schedules and statement of financial affairs.

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[2] Hereinafter all references to dates will be for the year 2004, unless otherwise stated.

[3] Mr. Warren had over twenty-three years of experience as a certified public accountant, and held himself out as a specialist in tax compliance and planning. *Plaintiffs' Exh. 1* at 1 *in* Appellants' App. Vol. 3 at 662. Mrs. Warren had over 18 years of experience as a certified public accountant. *February 4, 2005, Transcript of Trial* ("Tr."), at 101-02 *in* Appellants' App. Vol. 3 at 514-515.

[4] *Appellants' Opening Brief* at 20 n.16.

Therefore, instead of reiterating all of the detailed findings of fact set forth in the Appealed Order, we will glean from the Appealed Order only the pertinent findings of fact.[5]

The bankruptcy judge's opening paragraph is, to even an unsophisticated reader, what a "tell" is to a serious poker player:

> In anticipation of filing this chapter 7 petition, the debtors generated $90,000 by selling many of their assets, some at fire-sale prices. The debtors then spent the funds by purchasing exempt assets and prepaying future living expenses. Upon completion of all the transactions, the debtors had no realizable assets that could be liquidated to repay their over 6,000 creditors. When the debtors filed their bankruptcy papers, they did not list some of the sales and expenditures, and only added some of the omitted transactions after they were discovered by the plaintiffs/creditors.[6]

That is only the beginning of the detail-laden forty-page Appealed Order that culminated in a denial of Debtors' discharges. Interestingly, Debtors' own admissions in their Opening Brief do not deviate to any significant degree from the bankruptcy court's findings of fact.

According to the facts set forth in the Appealed Order, in 1998 Mr. Warren began performing accounting services through one of his entities for SyPRO, LLC ("SyPRO"), owned by Adrian and Zubin Mathai (collectively the "Mathai Brothers"), and was eventually hired as Chief Financial Officer. When difficulties arose regarding the way SyPRO conducted its business, Mr. Warren "devised a scheme to create GloBill.com, LLC (GloBill) to carry on the SyPRO business . . . ."[7] Both Mr. and Mrs. Warren and entities owned by them provided accounting services to GloBill and, pursuant to the scheme, the Warrens and their entities owned, directly or indirectly, GloBill's membership interests.

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[5] An in-depth, detailed description of the facts can be found in the *Appealed Order* at 1-40 *in* Appellants' App. Vol. 1 at 28-67.

[6] *Appealed Order* at 1-2 *in* Appellants' App. Vol. 1 at 28-29.

[7] *Id.* at 4 *in* Appellants' App. Vol. 1 at 31.

Thereafter, certain events occurred that caused the trust and working relationship between the Warrens and the Mathai Brothers to deteriorate, resulting in the Mathai Brothers filing suit in Pennsylvania against the Warrens and their entities in September 2002 to regain control of GloBill (the "Pennsylvania Litigation"). In October 2002, the Warrens caused GloBill and other entities to sue the Mathai Brothers and their entities in California (the "California Litigation"). Subsequently, the Mathai Brothers transferred their claims in the Pennsylvania Litigation to the California Litigation as counterclaims. The California Litigation continued, at great expense, for approximately a year and a half and was eventually set for a three week trial. Shortly before the commencement of that trial, on March 16, the parties attended a settlement conference conducted by a United States Magistrate Judge. During the settlement conference it became apparent the Warrens did not think they would be able to fund the trial, and they became frustrated because the Mathai Brothers refused to accept a settlement offer. It appears the settlement judge made some reference to bankruptcy *vis a vis* the Warrens' inability to fund the trial.[8]

Two days later, on March 18, and then again on March 23, Debtors met with bankruptcy counsel. As set forth in the Appealed Order, "[a]lthough the exact content of the discussions with their attorney is not of record, the Warrens evidently discussed that upon filing their case certain of their assets must be surrendered to the [C]hapter 7 trustee for liquidation to pay their creditors, but that exempt property would not be seized."[9] Immediately, the Warrens "set about liquidating their personal assets, converting the proceeds to exempt property, and

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[8] *See Tr.* at 114-15, 206 *in* Appellants' App. Vol. 3 at 527-528, 619.

[9] *Appealed Order* at 7-8 *in* Appellants' App. Vol. 1 at 34-35.

prepaying their future living expenses."[10] A mere six weeks later, the Warrens filed their Chapter 7 bankruptcy petition.

In analyzing Debtors' actions, the bankruptcy court specifically found that prior to filing their Chapter 7 bankruptcy petition on April 22, Debtors engaged in questionable pre-bankruptcy planning affecting the following assets:

1. Residence:

Prior to their bankruptcy filing, Debtors were making monthly mortgage payments of $5,000 on their 6,000 square foot residence. In late December 2003, Debtors refinanced this home at 100% of the property's value (over $700,000), thus resulting in no remaining equity. As a part of that transaction, Debtors paid off over $60,000 in credit card obligations and received about $46,000 in cash.

Three months later, and only thirteen days after first conferring with their bankruptcy counsel, Debtors purchased a less expensive home for $169,000 (the "665 East House"). In that transaction, Debtors paid $5,000 in earnest money, received a $25,000 credit, and received a repair allowance of $5,000. Thus, Debtors' mortgage payment went from $5,000 per month to $1,020 per month, and they went from a fully encumbered home to one with $30,000 in equity.

2. Coin Collection:

Debtors transferred a backpack containing an undisclosed number of collectible coins to a relative of the seller of the 665 East House, thus obtaining the $25,000 credit toward the purchase of that home. However, Debtors failed to produce any records of which coins were used in this transaction, even though Mrs. Warren testified she kept such records on her Quick Books computer

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[10] *Id.* at 8 *in* Appellants' App. Vol. 1 at 35. While testifying before the bankruptcy court, Mrs. Warren was adamant that they did not want any of their liquid assets to be used to pay the disputed claim of the Mathai Brothers, with whom they had been involved in litigation for the preceding eighteen months, and Mr. Warren believed he had been wronged by the Mathai Brothers and should have continued to receive a stream of payments from the now-defunct GloBill. *Id.*

software.

From the beginning of 2004 until the date of their bankruptcy filing, Debtors liquidated their coin collection, thereby generating funds that provided a significant source of funding for their household expenses. According to Debtors, they liquidated coins valued at $98,000, at cost, for $52,000, resulting in a loss exceeding $46,000. The various sales and losses were undocumented.

As was so cogently stated by the bankruptcy judge:

> [c]onsidering the detail with which these two CPAs approach the record keeping for the rest of their financial transactions – including meticulous computer records and numerous cash receipts – the omission of any records related to the 2004 coin transactions, the liquid nature of the coin collection, coupled with the alleged substantial loss, leaves the entire story regarding the pre-petition liquidation of the coin collections extremely suspect.[11]

3. Miscellaneous Personal Property:

Debtors' "conversion spree" began five days after first meeting with their bankruptcy counsel. Between March 23 and March 30, Debtors amassed $33,500 from the sales of three late model vehicles to car dealers. Between April 13 and April 17, Debtors sold jewelry, a piano, and various items of personal property including a pool table, couch, rototiller, office and home furniture, and a safe, for $3,824.

As to the sales of these items of personal property, the bankruptcy court found all to be arm's length transactions with unaffiliated entities for which Debtors received fair value and actually delivered the property to the buyers.

4. Cash:

Debtors generated close to $90,000 in cash and credits by liquidating their assets. In addition, Debtors had another $10,000 on deposit in their various bank

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[11] *Id.* at 10 *in* Appellants' App. Vol. 1 at 37.

accounts.[12] In the days before their bankruptcy filing, Debtors spent this cash in two ways: they converted the cash to property valued at over $20,000 and later claimed as exempt, and they prepaid future expenses totaling approximately $11,000. The specific transactions are as follows:

> 1. Debtors purchased two vehicles for a total of $3,800, then spent an additional $5,000 to repair or recondition them. Approximately one month later, Debtors valued these vehicles at only $3,500 on their bankruptcy schedules.
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> 2. Debtors pre-purchased six months' worth of grocery items and optical supplies for $3,000. However, less than a month later they valued the groceries at only $1,000 on their bankruptcy schedules.
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> 3. Debtors spent $2,000 on clothing, but shortly thereafter valued the clothing at only $10 on their bankruptcy schedules.
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> 4. Debtors purchased a $2,000 mattress, which they valued at a mere $200 on their bankruptcy schedules.
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> 5. Debtors spent over $8,000 for improvements to the East 665 House, which amount includes the $5,000 repair allowance.
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> 6. Debtors prepaid their 2004 real estate taxes in the amount of $900.
>
> 7. Debtors prepaid $5,051 to their health care provider.
>
> 8. Debtors prepaid four months' worth of mortgage payments in the amount of $4,080.
>
> 9. Debtors prepaid their accounting malpractice insurance premiums in the amount of $1,513.
>
> 10. As of the date of filing, Debtors had also prepaid $748.22 for various utilities and credit cards.

As to the pre-payments, Mr. Warren admitted he knew such prepayments were assets. However, Debtors failed to disclose them as assets on their bankruptcy schedules. Additionally, the bankruptcy court found that Debtors had never previously prepaid taxes, insurance, utilities, or mortgage payments.

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[12] This is the amount that remained in the bank accounts after repayment of $26,000 that had been borrowed to settle claims with the Mathai Brothers and their entities. *Id.* at 11 *in* Appellants' App. Vol. 1 at 38.

5. Bankruptcy Schedules and Statement of Financial Affairs ("SoFA"):

The bankruptcy court's review of Debtors' bankruptcy papers revealed significant omissions relating to their estate. Debtors failed to remedy these omissions at their § 341 Meeting of Creditors in May, and it was only during a Rule 2004 examination conducted in late June that Debtors disclosed the information regarding the remainder of the sales of personal property (including the coins), and the payments and pre-payments. Most telling is the fact that Debtors failed to amend their schedules until over a week after Plaintiffs-Appellees filed their complaint seeking denial of Debtors' discharges.

Among the most egregious omissions in the schedules and SoFA are the following:

> 1. Debtors' answers to questions 1 and 2 of their SoFA fail to list all payments made to creditors and fail to disclose the numerous pre-payments made.
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> 2. Debtors failed to disclose the total amount of income received from the 2004 coin sales by simply netting out the revenue from such sales in questions 1 and 2 of the SoFA.
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> 3. Debtors also omitted any mention of the transfer of $98,000 in coins in question 10 ("other transfers"), so that "[r]eviewing Questions 1, 2, and 10 together does not give any information, or even a hint of the true nature of the coin transactions, either as to the amount gained, the loss incurred, or whether the transactions represented a business venture."[13]
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> 4. The values assigned by Debtors to their personal property were suspiciously low, considering most of the property listed was purchased new immediately before their bankruptcy filing.
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> 5. Debtors disclosed paying their attorney $960 to file their personal Chapter 7 petition, but failed to disclose an additional $2,250 they paid this attorney for filing bankruptcy petitions for two other entities.

As set forth above, Debtors did not remedy the numerous disclosure deficiencies in their Schedules and SoFA until after the filing of the complaint seeking denial of their discharge. Even then, Debtors did not clearly detail the amount of the prepayments and failed to list them as assets even though they acknowledged that

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[13] *Id.* at 15 *in* Appellants' App. Vol. 1 at 42.

such prepayments constituted assets.

The bankruptcy court concluded its findings of fact thus: "The Court has had the opportunity to judge the credibility and demeanor of the Warrens. The Court finds Mr. Warren to be generally evasive, coy, and lacking in credibility. Mrs. Warren appears more forthright, *but her testimony, protestations notwithstanding, was inconsistent in several significant respects*."[14]

II. JURISDICTION AND STANDARD OF REVIEW

Debtors timely appealed the Memorandum Decision denying their discharges.[15] This Court, with the consent of the parties, has jurisdiction to hear appeals from final judgments, orders, and decrees of bankruptcy courts within the Tenth Circuit.[16] The parties to this appeal have consented to this Court's jurisdiction because neither party has elected to have this appeal heard by the United States District Court for the District of Utah.[17]

When reviewing the decision of a bankruptcy court, we are to apply the same standards of review that govern appellate review in other types of cases.[18] "For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')."[19] "In general a question of fact is one that can be answered with little or no reference to law, and a question of law is one

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[14] *Id.* at 19 *in* Appellants' App. Vol. 1 at 46 (emphasis added).

[15] Fed. R. Bankr. P. 8002(a).

[16] 28 U.S.C. § 158(a)(1) and (b)(1).

[17] 28 U.S.C. § 158(c)(1); Fed. R. Bankr. P. 8001(e).

[18] *See, e.g., Andersen v. UNIPAC-NEBHELP (In re Andersen),* 179 F.3d 1253, 1255 (10th Cir. 1999).

[19] *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

that can be answered with little or no reference to fact. So-called 'mixed questions' lie in between."[20]

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."[21] "A finding of fact is 'clearly erroneous' if it is without factual support in the record or if the appellate court, after reviewing all the evidence, is left with a definite and firm conviction that a mistake has been made."[22] Review of a case under the clearly erroneous standard is significantly deferential, requiring a "'definite and firm conviction that a mistake has been committed.'"[23] "When findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said."[24]

III. DISCUSSION

In order to succeed in obtaining denial of a debtor's discharge under § 727(a)(2)(A), the objector must establish, by a preponderance of the evidence, that "(1) the debtor transferred, removed, concealed, destroyed, or mutilated, (2) property of the estate, (3) within one year prior to the bankruptcy filing, (4) with

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[20] *Allis-Chalmers Credit Corp. v. Tri-State Equip., Inc. (In re Tri-State Equip., Inc.)*, 792 F.2d 967, 970 (10th Cir. 1986).

[21] Fed. R. Civ. P. 52(a).

[22] *Cowles v. Dow Keith Oil & Gas, Inc.*, 752 F.2d 508, 511 (10th Cir. 1985) (citation omitted).

[23] *Gillman v. Scientific Research Prods. Inc. (In re Mama D'Angelo, Inc.)*, 55 F.3d 552, 555 (10th Cir. 1995) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

[24] *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985); see *Gonzales v. Thomas*, 99 F.3d 978, 985 (10th Cir. 1996).

the intent to hinder, delay, or defraud a creditor."[25] In this case, at trial it was undisputed that the Warrens transferred property of the estate within the year prior to their bankruptcy filing, thus satisfying the first three elements of § 727(a)(2)(A). Therefore, as bankruptcy court correctly noted, "[t]he pivotal issue in dispute in this case is intent."[26]

A finding of "actual intent to defraud creditors" must be made in order to deny a debtor's discharge pursuant to § 727(a)(2).[27] It is well established that "the desire to convert assets into exempt forms by itself" does not rise to the level of actual intent to defraud.[28] Indeed, "extrinsic evidence of fraudulent intent is required to establish fraud."[29] Fraudulent intent to conceal assets "may be

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[25] *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1293 (10th Cir. 1997); *see also In re Carey*, 938 F.2d 1073, 1076 (10th Cir. 1991); *Cadle Co. v. Stewart (In re Stewart)*, 263 B.R. 608, 611 (10th Cir. BAP 2001), *aff'd*, 35 F. App'x 811 (10th Cir. 2002).

The pertinent portion of the statute provides that:

> The court shall grant the debtor a discharge, unless –
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> . . . .
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> (2) the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –
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> (A) property of the debtor, within one year before the date of the filing of the petition . . . .

11 U.S.C. § 727(a)(2)(A).

[26] *Appealed Order* at 20 *in* Appellants' App. Vol. 1 at 47.

[27] *Carey*, 938 F.2d at 1077 (emphasis omitted).

[28] *See In re Johnson*, 880 F.2d 78, 81 (8th Cir. 1989).

[29] *Id.*

established by circumstantial evidence, or by inferences drawn from a course of conduct."[30]

Courts typically look for specific indicia of fraud, often referred to as "badges of fraud."[31] In analyzing a case in light of these indicia or badges of fraud, the court is to be mindful that "[t]he cases . . . are peculiarly fact specific, and the activity in each situation must be viewed individually."[32]

"A bankruptcy court's findings concerning intent are factual and subject to review under a clearly erroneous standard."[33] The question of "'[w]hether a debtor transferred his property with intent to defraud creditors is a finding of fact.'"[34]

Here, the question of whether the Warrens had the necessary wrongful intent is a question of fact.[35] We review the bankruptcy court's factual findings for clear error.[36] "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."[37]

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[30] *Farmers Co-op. Ass'n v. Strunk*, 671 F.2d 391, 395 (10th Cir. 1982).

[31] *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1293 (10th Cir. 1997); *Carey*, 938 F.2d at 1077; *Cadle Company v. Stewart (In re Stewart)*, 263 B.R. 608, 611-12 (10th Cir. BAP 2001), *aff'd*, 35 F. App'x 811 (10th Cir. 2002).

[32] *Carey*, 938 F.2d at 1077.

[33] *Holaday v. Seay (In re Seay)*, 215 B.R. 780, 788 (10th Cir. BAP 1997).

[34] *Id.* (quoting *Baker v. Mereshian (In re Mereshian)*, 200 B.R. 342, 345 (9th Cir. BAP 1996)).

[35] *Seay*, 215 B.R. at 788.

[36] *IRS v. Craddock (In re Craddock)*, 149 F.3d 1249, 1255 (10th Cir. 1998); *Phillips v. White (In re White)*, 25 F.3d 931, 933 (10th Cir. 1994).

[37] Fed. R. Civ. P. 52(a) (made applicable in adversary proceedings by Fed. R. Bankr. P. 7052).

The bankruptcy court made the following extensive findings regarding evidence supporting fraudulent intent on the part of the Warrens:

> First, the most blatant indication of conduct falling within § 727(a)(2) is the Warrens' transfers of the coins. The transfers were concealed and obscured by the manner in which they are reported in the SofA. The Warrens' responses do not begin to indicate the scope of the transactions because they only report their net sales in Question 2 and fail to list the transfers in Question 10. The Warrens did not voluntarily disclose the transfers; it was only after the Amendments were made in response to the Rule 2004 examination that the extent of the transactions was revealed.
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> Timing also argues against the Warrens. According to the Warrens' testimony, a portion of the coins were liquidated between the first of the year and March 2004 at a loss. If so, the transactions in which the loss was sustained occurred within the few months preceding bankruptcy. The rest of the coins were transferred for a down payment on the 665 East House, just days prior to the bankruptcy filing. That transfer occurred just after the settlement conference regarding the California Litigation in which the Warrens determined they could not afford to defend the Plaintiffs' claims.
>
> It is impossible to ascertain if any of the coin transactions involved insiders, or whether the Debtors retained possession of the coins allegedly sold, because there are no records of the transactions in evidence. Although Mrs. Warren testified she kept computer records of the transactions related to the coins, none were produced. There is no way of knowing how many coins were sold, to whom, when, and on which coins a loss was taken. Given the meticulous detail in which the Warrens keep their finances, it is not credible that they failed to retain records related to these transactions. This unusual lack of data indicates that the Warrens are attempting to hide the nature of these transactions.
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> Finally, the coin collection was not transferred for equivalent value. The Warrens did not obtain even cost for the coins, as they had in the past, so that the assets of the estate would be preserved for creditors, but instead dumped the remainder of the coins to obtain the one asset they desired – the 665 East House. Given the commodity nature of the coin collection, the transactions for cash, and the alleged loss as opposed to breaking even as in prior years, the Warrens' version of the coin transactions is not credible and indicates an attempt to hinder, delay, or defraud their creditors.[38]

The bankruptcy court also made detailed findings regarding the Warrens' credibility. Those findings bear repeating verbatim:

> All told, the Court must determine if the Warrens' explanation that they were simply trying to position themselves to support their

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[38] *Appealed Order* at 26-27 *in* Appellants' App. Vol. 1 at 53-54.

> family and grow their new business post-petition is true, or if, instead, they were attempting to hinder, delay, or defraud their creditors. The Court concludes that the evidence weighs in the Plaintiffs' favor.
>
> Many of the badges of fraud have been proven, and the Warrens' explanation of their conduct is not credible. To state that Mr. Warren is evasive is to understate his conduct on the stand. It is one thing for a witness to seek clarification on a question, it is quite another to constantly request rephrasing or clarification on common terms and phrases. Mr. Warren was not just attempting precision in his responses, he was attempting to word-smith his answers to avoid being caught in a deception. Mrs. Warren's statements that she gave no thought to creditors (especially the Mathai Brothers) during the time she was liquidating assets and spending the proceeds is simply not credible. She was converting assets and spending cash only days after the California Litigation settlement conference, and she vocally denied any obligation owed to the Mathai Brothers. Nor is it credible that the Warrens thought the new accounting business would be any more successful than the old one, given that they planned no changes at all in how they were to run the business. The Warrens readily obtained employment just after filing for bankruptcy protection at wages more than sufficient to meet their family expenses. This tends to prove that their alleged panic about being able to provide for their family post-petition was likewise not credible.[39]

In conclusion, the bankruptcy court stated that:

> Mr. Warren's pattern of sharp dealing is entirely consistent with a scheme to liquidate each and every asset, no matter the loss, to prevent payment to the Mathai Brothers. [T]his Court is "struck by . . . [t]he Defendants[']. . . animosity toward the Plaintiff." The level of animosity between these two parties cannot be understated, and strongly argues in favor of a determination that the Warrens would do just about anything to prevent their assets from falling into the Mathai Brothers' possession. Therefore, the Court concludes that the Plaintiffs have met their burden of proof regarding the § 727(a)(2) claim. [T]he Warrens have abused pre-bankruptcy planning because their purpose was to place assets out of reach of the Mathai Brothers.[40]

In seeking reversal of the Appealed Order, Debtors proffer several arguments. First, Debtors argue that the bankruptcy court misapplied the standard for finding actual intent to hinder, delay, or defraud a creditor previously set by the Tenth Circuit Court of Appeals in *Brown* and *Carey*, and by this Court in

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[39] *Id.* at 28-29 *in* Appellants' App. Vol. 1 at 55-56 (footnote omitted).

[40] *Id.* at 29-30 *in* Appellants' App. Vol. 1 at 56-57 (footnote omitted).

Stewart.[41] According to Debtors, a bankruptcy court errs in applying this standard when it ignores "uncontroverted evidence introduced by the debtor to explain disparities on his statements and schedules."[42] However, what Debtors fail to acknowledge is that, uncontroverted or not, after observing their demeanor and listening to their testimony, the bankruptcy court did not believe their evidence or their explanations. Thus, the bankruptcy court did not err in this regard.

Next, the Warrens rely on case law holding that a debtor is entitled to participate in pre-bankruptcy planning and is permitted to make full use of his exemptions, and assert they did not have the requisite intent to "hinder, delay, or defraud creditors" because all actions taken and all omissions or misrepresentations were made upon advice of their bankruptcy counsel.

Notably absent from the trial before the bankruptcy court was the testimony of the Warrens' bankruptcy counsel. Thus, the record is devoid of any evidence regarding counsel's understanding of what the Warrens sought to accomplish and the specific advice counsel gave the Warrens. The bankruptcy court had before it only the Warrens' version of counsel's advice, which, in its discretion, it refused to accept at face value.

Additionally, Debtors assert that because the bankruptcy court found Mrs. Warren's conduct matched only two of the nine badges of fraud and found her to be forthright, it erred in denying her discharge. As set forth above, courts that analyze cases for badges of fraud consistently state that "[t]he cases . . . are peculiarly fact specific, and the activity in each situation must be viewed

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[41] *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1293 (10th Cir. 1997); *see also In re Carey*, 938 F.2d 1073, 1077 (10th Cir. 1991); *Cadle Co. v. Stewart (In re Stewart)*, 263 B.R. 608, 611-12 (10th Cir. BAP 2001), *aff'd*, 35 F. App'x 811 (10th Cir. 2002).

[42] *Appellants' Reply Brief* at 4. *See Brown*, 108 F.3d at 1294.

individually."[43] Though Debtors attempt to portray Mrs. Warren as "forthright," the bankruptcy court's exact words belie such a finding: "Mrs. Warren appears more forthright, *but her testimony, protestations notwithstanding, was inconsistent in several significant respects*."[44] Viewing the facts and the Debtors' activity in this case, the bankruptcy judge was within her discretion in finding there was sufficient evidence of the requisite number of badges of fraud to justify denial of both of the Warrens' discharges.

In reviewing this case under the clearly erroneous standard, we accord significant deference to the bankruptcy court's opportunity to view the witnesses' demeanor on the stand, their tone of voice, and to judge their credibility. The bankruptcy judge made extensive and detailed findings of fact, and nothing argued by Debtors convinces us the bankruptcy judge made a mistake.

IV. CONCLUSION

Because we find no clear error in the bankruptcy court's finding that Debtors' discharges should be denied pursuant to § 727(a)(2), the decision of the bankruptcy court is affirmed.[45]

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[43] *Carey*, 938 F.2d at 1077; *Stewart*, 263 B.R. at 611.

[44] *Appealed Order* at 19 *in* Appellants' App. Vol. 1 at 46 (emphasis added).

[45] We need not consider the arguments made as to § 727(a)(4) because "[i]f a single ground for denial of discharge is established, the inquiry ends." *Woolman v. Wallace (In re Wallace)*, 289 B.R. 428, 433 (Bankr. N.D. Okla. 2003).